

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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UNITED STATES OF AMERICA,  
Plaintiff,  
vs.  
ADRIAN ACEVEDO-HERNANDEZ, *et al.*,  
Defendants.

Case No. 2:14-cr-00242-JCM-VCF

## **ORDER AND** **REPORT & RECOMMENDATION**

This matter involves the United States of America's prosecution of Adrian Acevedo-Hernandez, Jose Luis Montufar-Canales, and J. Nemias Reye Marin under the Migratory Bird Treaty Act, 16 U.S.C. §§ 703, 707(a), for possessing a Morning Dove, an American Widgeon Duck, and three Green-winged Teal Ducks with no permit. (*See generally* Indict. #1<sup>1</sup>). Before the court is the Government's Motion to Extend Time (#48) and Marin's Motion to Continue (#53). For the reasons stated below, both motions are granted.

Trial is currently set for January 5, 2015. Four motions are currently pending: (1) Acevedo-Hernandez's Motion to Suppress, (2) Acevedo-Hernandez's Motion to Dismiss, (3) the Government's Motion to Extend Time to oppose the Motion to Suppress, and (4) Marin's Motion to Continue.

On December 16, 2014, the court held a hearing on the Government's Motion to Extend Time and Marin's Motion to Continue. The Government requests additional time in order to conduct an investigation and oppose the allegations set forth in Acevedo-Hernandez's Motion to Suppress. Marin ask the court to continue the trial date for 60 because he recently retained new counsel.

<sup>1</sup> Parenthetical citations refer to the court's docket.

1 Acevedo-Hernandez—the only defendant who is currently incarcerated—opposes both motions  
2 and invokes his Speedy Trial rights. The court notes Acevedo-Hernandez’s objections for the records but  
3 nonetheless grants the motions. 18 U.S.C. 3161(h)(6) permits the court to toll the Speedy Trial Act against  
4 a defendant where, as here, an unsevered co-defendant files a motion for continuance, which requests a  
5 reasonable delay. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010).

6 Here, Acevedo-Hernandez’s unsevered co-defendant requests a 60-day continuance because he  
7 recently retained new counsel. This is reasonable. Additionally, the court notes that a continuance is  
8 necessary because the parties cannot fully brief, and the court cannot adjudicate, Acevedo-Hernandez’s  
9 motions to suppress and to dismiss before the current trial date.

10 ACCORDINGLY, and for good cause shown,

11 IT IS ORDERED that the Government’s Motion to Extend Time (#48) is GRANTED.

12 IT IS FURTHER ORDERED that Acevedo-Hernandez Motion to Suppress (#45) and Motion to  
13 Dismiss (#46) are set for a hearing on January 21, 2015, at 10:00 a.m., in courtroom 3D.

14 IT IS RECOMMENDED that Marin’s Motion to Continue (#53) be GRANTED and that trial be  
15 continued for not less than 60 days.

16 IT IS FURTHER RECOMMENDED that the District Judge set a trial date at his convenience if  
17 the Court adopts this report and recommendation.

18 DATED this 18th day of December, 2014.



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21 CAM FERENBACH  
22 UNITED STATES MAGISTRATE JUDGE  
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